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Current Topics.

County Court Premises.

THOSE whose professional duties take them round the various county court circuits are familiar with the extremely varied and not always comfortable or adequate premises which are provided for the sittings of the courts. The sharing of courts with petty sessions, and even the not infrequent use of the council chamber of the local authority, puts a strain on all concerned, either with the work of the courts affected or with the work of the authority. From an article by a special correspondent in *The Times* of 3rd September, we learn that on 9th July all the cases at the High Wycombe County Court were adjourned *sine die* because judge, counsel, witnesses and registrar found themselves on that date locked out of the municipal offices where it had been arranged to hold the court sittings. It appears that ever since the establishment of county courts the High Wycombe Court has sat at the Guildhall in that borough. Complaints were made that the accommodation was noisy, draughty, difficult to warm, and badly ventilated, and the Lord Chancellor gave instructions for other accommodation to be provided. The Ministry of Works and Planning, interpreting ss. 33 and 34 of the County Courts Act, 1934, as empowering it to demand that the council hand over certain rooms in the municipal offices for the sittings of the court, made a formal request to the council, but the reply came that the rooms could not be spared. The Ministry then ordered the rooms to be made ready for a sitting of the court on 9th July. The town clerk asked that the matter be deferred until the council could discuss it at its meeting on 21st July, but on 6th July the town clerk was informed that the county court had been called to take place at the municipal offices on 9th July. The Lord Chancellor has now cut the Gordian knot by an act of characteristic wisdom and restraint, for, by a temporary order, dated 2nd September, he has ordered that the holding of the High Wycombe County Court shall be discontinued till further notice and the district of that court shall be consolidated with the district of Aylesbury County Court, and a court shall be held for the consolidated district at Aylesbury by the name of the Aylesbury County Court. All necessary ancillary directions for the validation and continuation of existing processes are contained in the order. The order recites that no suitable court house within the district of the High Wycombe County Court is for the time being available for the holding of a county court for that district. Many county court advocates will feel that much the same can be said of many other districts which they are obliged to visit in the course of their professional duties. It is true that justice has been administered under worse conditions in the past, but those conditions have been gradually ameliorated, and, perhaps, county court judges, registrars, clerks and advocates can look forward to the provision of numerous dignified and comfortable county courts as their little portion in a better post-war world.

The War Damage Commission.

IN the course of a statement to the Press on 7th September, Mr. A. M. TRUSTRAM EVE, K.C., chairman of the War Damage Commission, reviewed the progress of the Commission's work up to date, and examined some of the more important provisions of the War Damage (Amendment) Act, 1942, which received the Royal Assent on 6th August. Referring to some public statements which he had made on previous occasions, Mr. EVE said that s. 7 of the 1941 Act, dealing with the public interest, was one of the principal deterrents against hasty and ill-advised rebuilding, and that up to the present the London County Council and thirty-six cities and towns had availed themselves of its protection. With regard to the "Practice Notes," it was the speaker's opinion that a copy should be in the hands of everybody who had anything to do with war damage to land and buildings. Up to 28th August, 1942, the Commission had received 593,755 claims in respect of which payments of money were due from the Commission so soon as the claims could be checked. Of these claims, 495,151, or 83 per cent., had on that date been settled in full. By 7th September the Commission had passed the half-million in numbers of cheques. Adding in cases where payments on account are made pending final settlement, they brought the percentage to 87 per cent. In the great majority of cases there had been no undue delay. The absence of bombing encouraged owners to repair their properties and make the consequential claims, and the average weekly intake for some time past had been 11,000 to 12,000 claims, and Mr. Eve doubted whether the Commission would at any time be able to report a higher percentage of settlements than 85 or possibly 90 per cent. of the payable claims received. It was astonishing that the warning against delay in making claims had not been heeded in the Greater London area, although the results from the rest of the country were good. With reference to the Amendment Act, Mr. EVE said that the value of débris was taken into account in assessing the compensation under the 1941 Act, but the new Act also provided that where temporary repairs were carried out by an owner, the value of débris would be set off against a final claim for compensation. The Amendment Act also empowered the Commission, with the Treasury's consent, to give owners the benefit of the doubt, and treat clearance as war damage where clearance work for salvage, health or similar reasons does not already clearly count as war damage under the 1941 Act and compensation falls to be dealt with under the Compensation (Defence) Act, 1939. Before steel was removed there was consultation between the appropriate authorities. It could be stated broadly that in value payment cases all the steel which is recoverable may be taken, but in cost of works cases only that may be taken the removal of which will not prejudice the future repair of the building. With regard to planned redevelopment and the effect of statutory restrictions such as building lines and improvement lines on compensation, Mr. EVE stated that if the restriction was imposed by virtue of an Act passed before 26th March, 1941, and was actually in force against a particular property at the date of the bomb damage, its effect must be regarded in calculating the war damage value payment. But if the restriction was imposed by a later Act, or if, although under a pre-March, 1941, Act it became effective on a particular property after the date of the damage to the particular property, the restriction was disregarded for war damage payments. Gardeners and sportsmen would welcome the provision by which a portion of the value payment would be devoted to compensation for destroyed huts, pavilions, etc., where the people who put it up had only a short tenancy, or might be there only by courtesy. Mr. EVE also referred to the provisions authorising the payment of compensation to the owners of rent-charges, fee farm rents, chief rents, feu duties and ground annuals, and the making of hybrid payments partly for the cost of works and partly for value payments. It is clear from the chairman's latest statement, if it had not previously been made clear, that any serious criticism of the Commission's work up to date has been based on a complete misunderstanding of the facts or the law or both.

Factory Accidents.

SOLICITORS who have taken part in workmen's compensation and running-down cases will be interested in a Report on the "Personal Factor in Accidents" issued by the Medical Research Council of the Industrial Health Research Board and recently published by H.M. Stationery Office. The Board, which was first appointed in direct succession to the Committee on the Health of Munition Workers, set up during the war of 1914–18, has done invaluable work in the past, the results of which, so far as they are applicable to the present war effort, were printed in Emergency Reports Nos. 1 and 2 in 1940 and 1942 respectively. The present report deals with measures which might be taken

having regard to the root causes of accidents on the roads and in industry, to reduce their incidence. Part I of the report deals with general causes, such as excessively long hours of work, inefficient heating, ventilation and lighting, inexperience, physical and mental fitness or otherwise for work, and the occasional lack of an active attitude on the part of both management and workpeople, particularly in safety committees, towards the reduction of accidents. It is interesting to note that with regard to age the committee holds that young people are more liable than older people to sustain accidents, the accident rate falling steeply from the age of fourteen to twenty-three, after which, for practical purposes, it may be regarded as stationary. There is a small rise in accident rate in middle age, followed by a fall. The capacity for speed, which is necessary in modern industry, is at its highest in the middle twenties. There is a fairly steep rise in this capacity during the years of growth, and efficiency does not noticeably begin to fall off until the late thirties, after which it declines year by year. It is also stated that congestion of goods in passageways and bringing them round awkward corners could be overcome by an efficient routing scheme. The height of the working bench and the raising of seats where necessary so as to adjust workers of short stature to the height of the bench, is also mentioned. Part II of the report deals with " accident proneness." This is a factor which, the report states, has been dimly recognised in practical life, but has been ignored until recently. Statistics have shown that the majority of accidents are due to relatively few individuals. Although liability to accidents is largely determined by the degree of risk in a person's environment, psychological investigations have shown that those with an unduly high accident rate can be partly differentiated on the basis of measurable individual reactions. Tests have measured and recorded accuracy and speed of hand and eye co-ordination, and rapidity of response to sensory stimuli among skilled workers, but have not been so satisfactory among unskilled workers, because unskilled work is not associated with proficiency but only with willingness to perform a repetitive process without finding it irksome. Proficiency in skilled work, however, goes together with a low accident rate. Assuming that all safety precautions with regard to the proper fencing and lay-out of machinery, good heating, lighting and ventilation, shortening of working hours, etc., are adopted in a given factory, the report suggests that it would be then possible to reduce accident only by selection on the basis of accident proneness. It also contains useful suggestions as to how this may be achieved, particularly in the early stages of the worker's life, by transference from more to less risky occupations ; the card index method of keeping accident records is also strongly recommended. Valuable as these researches are in war-time for the purpose of keeping as low as possible the inevitable rise in the accident rate owing to longer hours and other causes, their value for the normal purposes of peace is enormous, and lawyers in particular will find that they open up new vistas of thought with regard to the application of the law of negligence in the courts.

Name of a Limited Company.

AN unusual type of prosecution took place at Bow Street Police Court on 24th August (*The Times*, 25th August), when the Religious Education Press, Ltd., were fined £5 and ordered to pay £5 5s. costs for failing to state in an advertisement in the *Church Times* that the name of the company was the Religious Education Press, Ltd., contrary to s. 93 (1) (*c*) of the Companies Act, 1929. That paragraph provides, *inter alia*, that every company shall have its name mentioned in legible characters in all notices, advertisements and other official publications of the company. For the Board of Trade it was stated that the word " Limited " was omitted from the name of the company in the advertisement in question. Although, on the face of it, the matter seemed trivial, the company had been warned. The Publishers' Association had written on behalf of the defendants to the Board of Trade stating that the Association had always understood that the Act applied only to advertisements of a formal nature, and they added that 50 per cent. of the limited companies who advertised in *The Times* did not include the word " Limited " in their names. On behalf of the defendants, it was argued that the advertisement in question was not " of the company " within the section, but " by the company," because the company paid for it. It was also argued that if the prosecution's construction of the Act was correct, it was a section more honoured in the breach than in the observance. If there had been an offence there could be nothing more innocuous to punish. Every book published by the company was a religious book and there could be no question of the public having been defrauded. Even assuming that there was any validity in the argument that there is a distinction between advertisements " by " the company and advertisements " of " the company, it would be difficult in most cases to resist the conclusion that an advertisement by the company was also of the company. In view of the plain words of the section and the fact that s. 2 (1) of the Act enjoins the use of the word " limited " as the last word in the company's name, it would appear that there is a widespread and somewhat venal breach of the law. It is an unfortunate state of affairs, which could be cleared up by amending legislation.

New Retail Businesses Order.

A NEW Location of Retail Businesses Order, 1942 (S.R. & O., No. 1619, dated 13th August), substantially reproduces the effect of the previous order of 1941 (No. 1784), except for one important amendment. In the previous order there were two exceptions to the rule that persons carrying on certain classes of non-food retail business specified in the schedule should from and after 1st January, 1942, obtain a licence from the Board of Trade. One exception was where the business in question had been carried on at the premises by the person now conducting it during the period beginning with 1st December, 1940, and ending on 23rd October, 1941, or a part of that period. The second exception was added by S.R. & O., 1941, No. 1933 (dated 5th December, 1941), and occurred where the business in question had been carried on during that period or a part of it by a person from whom the person now conducting it had acquired the goodwill. The new order abolishes the second exception. It appears that the abolished exception constituted a loophole which enabled persons to deal in petitioners' goodwills so as to evade the order. The Board of Trade has announced that in future local price regulation committees will favourably consider applications for licences where there is a genuine transfer of goodwill, but generally they will consider applications in relation to the local need for a new business or of an extension of an existing business. The order, however, makes it clear that licences granted before 20th August, 1942, are valid, and any business which was on that date being carried on in conformity with the revoked order may legally continue its active existence.

Salvage and Historical Records.

WHILE the responsibilities of professional persons who use large quantities of paper in the course of their daily work are as high as the nation's need of that commodity for the manufacture of munitions, it is worth remembering that those responsibilities involve complementary obligations with regard to the conservation of important records and documents. Those solicitors are few, indeed, who would dream of sending to salvage papers which have any chance of being useful in some future transaction or litigation. There is, however, a further consideration which it has become necessary to emphasise from time to time, and this appears in a statement prepared by the British Records Association, published at the request of the Master of the Rolls in the August issue of *The Law Society's Gazette*. The statement points out that solicitors frequently have in their strong rooms large accumulations of documents which have long ceased to have any practical connection with business. Such accumulations result, not only from the management of business on behalf of private clients, but also from the holding of public or semi-public positions such as that of coroner, justices' clerk, registrar, and the like, and they are very likely to include documents of much more than local or personal interest : documents, for instance, of the classes which have furnished material for most of the important researches in social and economic history made in recent years. It is obviously undesirable, the statement proceeds, to risk the sacrifice of valuable material such as this by wholesale or indiscriminate destruction : the salvage authorities themselves have more than once disclaimed any desire to promote such action. But to attempt to sort out the documents which are of value seems to entail more time and labour than most solicitors, with their staffs depleted by war, can afford. To meet this difficulty a brief schedule of documents which should be excepted from any scheme of general destruction has been compiled in accordance with the best legal advice, and in consultation with the Director of Salvage. The British Records Association will be glad to give further advice, requests for which may be sent to " The Public Records Office, Chancery Lane, W.C.2." The schedule is as follows :—(1) Documents made or executed in whole or in part before the year 1750 ; (2) Manorial and tithe records, which are statutorily in the charge and superintendence of the Master of the Rolls ; (3) Records of regality and other heritable jurisdictions which are part of the Sheriff Court Records of Scotland and transmissible to the General Register House ; and records of any Scottish local court ; (4) Records of any ecclesiastical corporation, body or court, public or local authority, commission, statutory body, endowed foundation, public utility undertaking or social service organisation ; (5) Documents relating to a public office or the discharge of the functions thereof ; (6) Manuscript maps and plans of a date before 1850.

Recent Decision.

In *R.* v. *Dashwood*, on 26th August (*The Times*, 27th August), the Court of Criminal Appeal (HUMPHREYS, HILBERY and TUCKER, JJ.) dismissed an appeal from a conviction of murder where the appellant sought to call fresh evidence on the issue of his sanity, having forbidden his counsel to raise that issue at his trial. The court refused to make the assumption that the appellant was so insane at the trial as not to appreciate the desirability of the issue being raised, or that the fact that he differed from his counsel was evidence of insanity.

A Conveyancer's Diary.

Re Lindop.

A FEW weeks ago I dealt with the cases on presumption of death where there is no evidence as to the fate of the person in question. There has now appeared the report of *Re Lindop* [1942] Ch. 377, on the kindred subject of "commorientes." The facts were as follows: Mr. and Mrs. Lindop lived together in Torquay. One morning in May, 1941, at about 5.30, a casual enemy aeroplane dropped two bombs on their part of the town. Having noticed the flash, a Mr. Quick, the leader of a rescue squad, went to the road where the bombs had fallen and there found the Lindop's house demolished, and their dead bodies, in night attire, among the ruins and near the remains of two beds. So much for the evidence. One inference was pretty clear, namely, that both had been killed by the blast from the same explosion. But the other inferences and conclusions of law were more difficult.

Mr. Lindop had, substantially, left his whole estate to his wife. She, on the other hand, had given him only a small legacy, and her residue was to go to her own blood relations. Neither had made alternative bequests. Thus, if Mrs. Lindop died first, her husband's estate would get the legacy, which would then enure for the benefit of his next of kin, his residuary gift to her having lapsed. Conversely, if he died first, his estate would go to swell that of his wife, and would thus benefit her relatives. But the question was what the facts were, looking into the matter more closely and inquiring what lay behind the finding of a demolished house and two dead bodies. Now, it would, I suppose, sometimes be possible to draw an inference from circumstances like those which would show that one of the people died later than the other. The bodies may be in relative positions consistent only with a certain order of death, as always occurs, for example, where A shoots B and then himself. In such circumstances there would presumably be no "uncertainty" as to the order of death, since the court would hold that A outlived B. But there was no such evidence in the *Lindop* case.

Accordingly, proceedings were started which were substantially between the husband's next of kin and the wife's next of kin, in the administration of the husband's estate. The wife's next of kin relied on the fact that Mrs. Lindop was younger than her husband, arguing that there was uncertainty as to the order of deaths and that consequently s. 184 of the Law of Property Act applied. That section is as follows: "In all cases where, after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other, such deaths shall (subject to any order of the court) for all purposes affecting the title to property, be deemed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder." On the available facts the section seemed likely to be applicable, since two persons were dead in circumstances making it impossible to say that either died before the other. But a strong effort was made by counsel for the husband's next of kin to argue (*a*) that such evidence as there was tended to prove that the deaths were simultaneous, and (*b*) that in any case the words in brackets in the section "(subject to any order of the court)," "enable the court to make an order which will exclude the section and do better justice." It is worthy of note that the learned editors of the current "Wolstenholme," who were in the best position to know the draftsman's intention, say in their note to s. 184 that it is open to the court to hold, as a fact, that the deaths were simultaneous. In *Re Lindop* the result of such a finding would clearly have been that the wife's estate could not have proved that she survived her husband and so could not have taken his residue, thus giving it to his next of kin; likewise, the husband's estate could not have proved the survivorship necessary to establish his claim to the legacy, which would thus have lapsed. As Bennett, J., explained, that would also have been the position under the law in force before 1926, quite apart from any express holding that the deaths occurred at the same moment. There is also, I think, little doubt that the result would have been more satisfactory.

But Bennett, J., felt unable to give effect to these arguments. He took the view that, since time is infinitely divisible, "the fact of two persons dying at exactly the same moment is so highly improbable that the evidence relied upon to prove it must be looked upon closely and critically." He considered that in view of the presumption created by s. 184 the onus of proof was on the party contending that the deaths were simultaneous, and held that this onus was not discharged. But I do not think the case stands only on onus of proof. The learned judge observed: "I am not concerned with the question whether two persons were killed at the same moment. I am concerned with quite a different question, whether two persons died at the same moment. Two birds may be killed, each being struck at the same moment by a different pellet coming from the same cartridge: there may well be a considerable period of time between their deaths." This distinction goes to the root of the matter, and in view of it I feel that there is not the smallest prospect of inducing a court to hold, for the purposes of s. 184, that deaths were simultaneous. As regards the other point that had been argued, Bennett, J., took the view that the effect of the words in brackets in s. 184 is not to give the court a discretion to disregard the statutory presumption, but to enable it to receive evidence on the order of death, "and, if the evidence is such as to displace the statutory presumption, to act upon that evidence." This interpretation is perhaps the only possible one for a rather unhappy piece of drafting, but I confess that it does not strike me as wholly satisfying. For the presumption only arises if, on the fact, it is *uncertain* who died first, and in order to bring the presumption into operation evidence must have been given on this point of fact. It seems odd that the Legislature should apparently expect there to be two stages: first, the proof of facts showing uncertainty; second, the proof of further facts displacing the first conclusion. In practice one would surely go straight to the second stage if there were any evidence to justify a conclusion that the younger person died first (which there was not in *Re Lindop*); if so, the presumption would never operate, as there would be no room for the uncertainty which is its premise. In a suitable case there seems matter for further argument on this point, though I should regard the idea of proving simultaneous deaths as having now been rendered valueless for practical purposes.

I think that *Re Lindop* also shows that there is a good deal to be said in favour of steps being taken, especially now while things are comparatively quiet, to make sure that people revise their wills so as to prevent injustices arising through s. 184, if, unhappily, we pass again into a phase of acute air-raids. The most important case is, of course, that of husband and wife, particularly where the elder of them has family property which ought not to be allowed to pass away from his or her family into that of the other spouse. I have recently given some thought to the necessary points of drafting, which are none too easy, and I think that probably the best solution is for the bequests and devises of the senior spouse to the junior one to be framed so as to vest only if the beneficiary survive the testator by one month. That period is long enough to ensure against the operation of s. 184 in most cases, and not so long as to cause inconvenience by the suspended vesting. But I should welcome any ideas on the point which readers of this column may like to advance, and shall hope a little later to put forward some actual specimen drafts.

Procedure in 1941.

Review of the Year.

(*Continued from p.* 257)

Costs, and Compensation (Defence) Act, 1939.

Costs incurred by a claimant in respect of negotiations by his solicitors upon the amount of compensation payable under the Compensation (Defence) Act, 1939, are not recoverable as part of the compensation under s. 2 (1) (*d*) (*Rhodes* v. *Secretary of State for War* (1941), 58 T.L.R. 32; 3 All E.R. 407; 85 SOL. J. 467).

The War Office took possession of Rhodes' house under reg. 51 (1) of Defence (General) Regulations, 1939. Compensation rent under s. 2 (1) (*a*) of the Act was agreed, and Rhodes asked for £5 5s. under s. 2 (1) (*d*), being his solicitors' costs in negotiating the settlement of £45 per annum. The point came up to a Divisional Court of the King's Bench Division on a special case stated under s. 7.

The War Office did not contend that it was unreasonable to employ solicitors; they said, however, that under the Act they were not liable to pay solicitors' costs, and that any payment would be *ex gratia*. In view of the great number of cases the question was one of great public importance. By s. 2 (1) (*d*) the claimant is entitled to the amount of—

> "Any expenses reasonably incurred . . . for the purpose of compliance with any directions given on behalf of His Majesty in connection with the taking possession of the land."

In default of agreement, the dispute goes to the General Tribunal (s. 7), which may state a special case for the opinion of the court on any question of law (s. 8). The tribunal has complete discretion over costs, and if such a course is justified on the merits, may award costs to an unsuccessful claimant (s. 9). Section 2 (1) (*d*) makes no reference to costs as such, but to "expenses" only, and that, too, only when incurred in order to comply with administrative directions (express or implied) to give possession.

Now the costs of a solicitor incurred in making arrangements to comply with directions are recoverable under s. 2 (1) (*d*), as part of the statutory compensation for giving possession. But "there is a difference between expenses incurred in complying with directions, and expenses incurred in measuring the compensation for having complied with the directions" (*per* Viscount Caldecote, C.J. (1941), 3 All E.R., at p. 409).

> "The expenses of measuring the compensation for having complied with the directions are not recoverable as part of the compensation under s. 2" (*ibid.*).

Compensation, said the Lord Chief Justice, should be awarded in accordance with the Act, rather than in accordance with an *ex gratia* measure fixed by the Treasury (*ibid.*).

VIII. Execution.

Solicitors' Charging Order for Costs.

At common law, the court, under its inherent jurisdiction, may, in its discretion, grant a solicitor a charging order on a sum ordered to be paid as costs (*Campbell* v. *Campbell & Lewis* (1941), 1 All E.R. 274; 85 SOL. J. 128).

A husband petitioner, by the decree *nisi*, was ordered to pay his wife's taxed costs. There had been a cross-petition; the intervener was dismissed from the suit with costs against the wife. The wife's taxed costs were £826; there was £550 in court. This sum was paid out to the wife's solicitor, leaving £276 to be found. An order was made for the payment to the solicitor of this balance. The costs of the intervener were taxed at £302; the husband took an assignment of this claim for costs in consideration of the payment to the solicitor of the sum in cash.

The solicitor then issued a summons for a charging order for £276 upon the costs ordered to be paid by the husband to the wife. The Court of Appeal (reversing the judge and the registrar) granted a declaration that the solicitor was entitled to a charge upon the costs.

The point was left open whether the wife's costs ordered to be paid by the husband were "property recovered or preserved" within the Solicitors Act, 1932, s. 69. The court, citing *Dallow* v. *Garrold* (1884), 14 Q.B.D. 543, opined that there might be a statutory charge, but expressed no concluded opinion.

Garnishee Order.

A judgment creditor is not entitled to obtain a garnishee order against the liquidator's account at a bank, judgment being against the company (*Lancaster Motor Co., Ltd.* v. *Bremith, Ltd.* (1941), 2 All E.R. 11 (C.A.)).

Under Ord. XLV, r. 1, said Sir Wilfrid Greene, M.R. (as he then was), a garnishee order *nisi* can be made on affidavit that any other person is indebted to the *judgment debtor*. Here, the money was not owing to the judgment debtor. The judgment debtor was the company; the account was in the name of the liquidator. Between the bank and the company there was no relationship of banker and customer, or debtor and creditor.

The court declined to follow the observations of Slesser, L.J., delivered without argument, or citation of authority (Romer, L.J., concurring) in *Gerard* v. *Worth of Paris, Ltd.* (1936), 2 All E.R. 905, 909, who said that "the mere fact that it (i.e., the account) stood in the name of the liquidator does not seem to me to effect any difference in her rights." In that case, the point was not argued, the main question being the priority of the claimant's debt. On the other hand, in *Hirschorn* v. *Evans* [1938] 2 K.B. 801; 3 All E.R. 491, Slesser, L.J., delivering the judgment of the majority of the Court of Appeal, held that a bank account in the joint names of a husband and wife could not be attached.

> "The crucial matter to be observed is the relationship of the alleged debtor to the judgment debtor. That relationship must be one of debtor and creditor, and unless it falls within that description, the rule does not apply" ((1941), 2 All E.R. at p. 14).

Jurisdiction to vary amount of security.

Where a judge has ordered a stay of execution, he can vary the order before it is passed and entered. This is in accordance with principle, and applies to a judicial decision generally.

But where the order has been passed and entered, the judge is *functus officio;* neither he, nor a brother judge, can vary the terms of the stay. The only remedy is to go to the Court of Appeal (*Re V.G.M. Holdings, Ltd.* (1941), 3 All E.R. 417, *per* Morton, J.).

Bennett, J., had ordered the respondent to pay £15,980 to the applicant, the liquidator of the company, and the costs of that application. The respondent having asked for a stay pending an appeal, the court granted a stay providing that he gave satisfactory security in the sum of £5,000 within four weeks, and within that period gave notice of appeal and duly entered the appeal for hearing.

The four weeks having almost expired, and security for £5,000 not having been given, the present application came before Morton, J., for a stay if £3,000 were paid into court within seven days. Morton, J., held that neither Bennett, J., nor he himself had jurisdiction to vary the order which had been passed and entered.

IX. Appeal from Interpleader in County Court.

No appeal in interpleader without leave of the judge lies from the county court where the money claimed, or the value of the goods claimed, or the proceeds, is less than £20. The Court of Appeal will not refer a case back to the county court judge to obtain his leave to appeal (*Crocker* v. *Hadley* (1941), 3 All E.R. 286; 85 SOL. J. 458).

Judgment against C was obtained for £12 10s. The bailiff seizing some of the goods, they were claimed by C's wife. The registrar, accordingly called upon H and Mrs. C to interplead, and permitted her to claim damages for the seizure. The county court judge dismissed her claim for damages.

MacKinnon, L.J., held that the proceedings came within s. 105 of the County Courts Act, 1934; the goods were under £20 in value; no leave to appeal had been given. The appeal, therefore, was not in order (at p. 288).

See also *Lumb* v. *Teal & Co.* (1889), 22 Q.B.D. 675; *West* v. *Automatic Salesman, Ltd.* [1937] 2 K.B. 398.

(*Concluded.*)

Landlord and Tenant Notebook.

A Recontrol Case.

A CORRESPONDENT has drawn my attention to the case of *Hedger* v. *Shutler*, a decision of the Court of Appeal, reported in the *Estates Gazette* of 2nd May last (vol. 139, p. 369). The paper shortage, no doubt, accounts for the brevity of the report in question, but it is regrettable that the statement of facts omits certain matters which might be of interest, such as the rateable value of the property concerned, and that the extract from the judgment does not give a very clear idea of the *ratio decidendi*. But as the issue was, substantially, whether a certain dwelling-house was controlled by the old Rent Acts or by that of 1939, the case is undoubtedly worth noting.

The action was for rent, mesne profits and possession (the plaintiff presumably relying on the non-payment of rent). The history of the house was as follows: It was let as a dwelling at 8s. a week from 1914 to 1917. Presumably the rent was then raised. The plaintiff became landlord in 1933. He acquired actual vacant possession in 1937. In January, 1938, he let it to the defendant at 17s. 6d. a week.

The defendant's contention was that the landlord, having failed to register the property, it continued to be controlled by the 1920 Act; that the standard rent was therefore 8s. a week; that the permissible rent was 12s. a week. This was rejected by the county court judge, who granted an order for possession unless £30 2s. 6d. were paid into court within twenty-eight days. The Court of Appeal dismissed the defendant's appeal without calling upon the respondent. But before discussing the judgment and its reasoning, it may be as well to review the facts stated against the background of the legislation concerned, which likewise has a history.

The Act of 1923 commenced decontrol by excluding from the then principal Act (that of 1920) houses wholly in possession of their landlords at the passing of the Act and houses of which the landlords subsequently acquired possession. This would be the foundation of the plaintiff's case: he acquired possession in 1937.

Registration of decontrolled houses was first provided for by the Act of 1933. This suspended the decontrol of "Class C" houses; those already decontrolled were, however, to be deemed to be within the principal Acts unless registration were effected. Whatever class the house belonged to, the plaintiff could clearly not have registered the house under this Act.

But in 1938 there was further decontrol and further provision for registration. The houses affected were part of the "Class B" group. The general decontrolling provision, to be found in s. 2, drew the line, for properties outside the Metropolitan police district, at £20 rateable value; houses already decontrolled should, by virtue of s. 4 (1), be registered within three months of the passing of the Act unless the rateable value did not exceed £13 per annum. One infers, though its rateable value is not mentioned, that the dwelling-house dealt with in *Hedger* v. *Shutler* was rated somewhere between the two, for there does not appear to have been any argument on the question whether it could have been registered.

What, then, the tenant presumably relied on was the provision contained in s. 4 (2): "If, in any proceedings with respect to any dwelling-house which is, or immediately before the passing of this Act formed part of, a dwelling-house to which sub-section (1) of this section applies, it appears that but for the provisions of the said section two of the Act of 1923 the principal Acts would have applied to the dwelling-house and that no application has been made by or on behalf of the landlord under that subsection within the time therein mentioned, the dwelling-house shall, subject as hereinafter provided, be deemed to be a dwelling-house to which the principal Acts apply." The "subject as hereinafter provided" alludes to a proviso permitting of late registration, up to a year from the passing of the Act, on showing "reasonable excuse."

The judgment of the Court of Appeal delivered by MacKinnon, L.J., took this line: the house became decontrolled in 1937; the landlord failed to register his claim; but no proceedings were taken by the landlord or tenant *subsequently that raised the question of control;* hence, the house was, despite the failure to register, not deemed to be controlled.

I think it is the first of the words italicised which indicates the gist of the judgment, for s. 4 of the Act of 1938 was repealed on 1st September, 1939, by the Act of that year. The words "that raised the question of control" are, as I read the judgment, otiose. Section 4 (2) of the 1938 Act spoke, as we have seen, of "*any* proceedings *with respect to* any dwelling-house which," etc. And it is well established (see *Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.) and *Salter* v. *Lask* [1924] 2 K.B. 754 (C.A.)) that the Acts do not merely provide a statutory defence. The 1920 Rules (which have been applied by those of 1939) provide: "Where proceedings are taken in the county court for the recovery of rent of any premises to which the Act applies, or for the recovery of possession of any premises to which, etc., . . . the court shall, before making an order . . . satisfy itself that such order may properly be made, regard being had to the provisions of the Act." *Hedger* v. *Shutler* was an action for rent and possession.

The circumstance that the action was not brought before the repeal of the section providing for registration seems more likely to be the essential ground. The reasoning would be this: the property became decontrolled by virtue of the 1923 Act. A later enactment—s. 4 of the 1938 Act—directed registration, failing which the dwelling-house should be deemed to be one to which the old principal Acts applied, this being the only sanction for the obligation to register. Under the section the tenant did not acquire any right; what was provided was that courts should, if there had been no registration, treat the house as if still controlled by the old principal Acts. Since 1st September, 1939, they are not directed so to treat it, and the landlord's right, conferred by the 1923 Act, is valid.

Our County Court Letter.

Tenancy under War Agricultural Committee.

In a recent case at Wellington County Court (*Cliff* v. *Williams*) the claim was for £50 as damages for trespass, and an injunction. The plaintiff's case was that the defendant, purporting to act under the authority of the Shropshire war agriculture committee, had forcibly entered her house, brought his furniture, and had remained in part possession for a week. The defendant's case was, that, having agreed with a firm of estate agents to take a tenancy of the plaintiff's holding, under the scheme of the war agricultural committee, he was told he could have possession. Having realised that he had exceeded his legal rights, the defendant had removed his furniture, in response to the plaintiff's request, on legal advice. His Honour Judge Samuel, K.C., observed that, as the defendant had vacated the house, there was no case for an injunction. Judgment was given for the plaintiff for £10 10s. with costs.

Concealed Traps.

The above subject has been considered in three cases. In *Mason* v. *Southam United Telephone Cables, Ltd.*, at Northampton County Court, the claim was for damages for negligence. The plaintiff was a van driver, and his case was that on the 4th July, 1939, he had left his vehicle in order to give assistance to the driver of two other vehicles, who had been in collision. On walking back to his van the plaintiff fell into an unguarded man-hole. The injuries suffered had since disabled him from holding any weight above the level of his shoulder. The defence was that the lid would have been on the man-hole, but for the fact that the two men in charge had rushed to the scene of the accident to render assistance. Nevertheless the plaintiff was twice warned of the presence of the cavity. When helped out, the plaintiff had remarked: "Fancy seeing the hole and then stepping into it." His Honour Judge Hurst was satisfied that the plaintiff was unaware of the presence of the man-hole, and the defendants' employees had been negligent in not ensuring that it was better guarded. The plaintiff had to prove, however, that his condition was due wholly to the accident and not to a progressive disease. Judgment was given for the plaintiff for £128 10s., with High Court costs to the date of remission, and costs on Scale C thereafter.

In *Broadwell* v. *Leicester Co-operative Society*, at Leicester County Court, the claim was for £26 3s. as damages for negligence. The plaintiff's case was that she had gone to the defendants' shop just before 6 p.m. on the 24th September, 1940. Although the shop was being closed an assistant beckoned the plaintiff in. While entering the shop the plaintiff fell over an iron bar, which was part of the fixtures for a grill gate on the outside step. The evidence for the defendants was that their warehouseman had fixed the gate and he saw no one approaching while doing so. The plaintiff must have pushed the wicket gate open and entered unobserved. It was contended for the plaintiff that the iron bar, seen by her, was one of the two which fixed the gate at the sides. She had tripped over one of these while it was leaning against the wall, preparatory to its being placed in position. His Honour Judge Galbraith, K.C., gave judgment for the plaintiff for £21 3s. with costs.

In *Bailey* v. *Cole*, at Leicester County Court, the claim was for £60 3s. as damages for negligence. The plaintiff was a voluntary air-raid warden and his case was that, while investigating a light showing in the black-out, he had fallen into a man-hole on the defendant's land. There was no protection round the man-hole, which had been dug across a path. This path had been used by all who so desired, with the knowledge and acquiescence of the defendant. The defendant denied that the man-hole had been left unprotected, as it was covered with planks and protected by pipes and ropes on the night in question. It was further contended that the plaintiff was a trespasser and that his allegation of a fall into the man-hole was unfounded. His Honour Judge Galbraith, K.C., held that the plaintiff acted reasonably and with due care. He was unaware of the existence of the excavation, which was a dangerous trap. The workmen had been transferred to another job and the hole was left unguarded. Judgment was given for the plaintiff for £41 3s. with costs.

To-day and Yesterday.

LEGAL CALENDAR.

7 September.—On the 7th September, 1733, "ended the general gaol delivery for the City and County of Bristol when the following persons received sentence of death, viz., William Russel and James Jones for stealing twenty-two pieces of lawn, ribbons, etc., and John Philips for stealing pork and other meat and likewise a mare. After business was ended at the bar, the grand jury complimented the Hon. John Scrope, their Recorder, on the services he had done that City in Parliament, and invited him to stand as candidate at the ensuing election. They likewise gave the same invitation to Sir Abraham Elton. They both thanked them in a handsome manner and accepted the offer."

8 September.—After Captain Porteous had been dragged out of prison and lynched by the people of Edinburgh a bill was brought before Parliament to disfranchise the city. William Murray, afterwards Lord Mansfield, successfully argued against it as counsel in both Houses. In gratitude for his signal service, there was presented to him the freedom of Edinburgh in a gold box on the 8th September, 1743. About the same time he earned the thanks of the dean and chapter of Christ Church by obtaining a favourable decision in the Court of Chancery on a question of much importance to them, and in acknowledgment they granted him the nomination of a student.

9 September.—On the 9th September, 1731, a young lad called William Booth was tried at the Old Bailey for picking a pocket of 2s. 6d., then a capital offence, but a merciful jury, to save his neck, found him guilty to the extent of 10d. only. Whereupon he called out: "Damn you all, here's a shilling; give me 2d. Pray hand it to 'em."

10 September.—The case of Mary Squires, an old gipsy of extraordinary ugliness, was the sensation of 1753. On New Year's Day, Elizabeth Canning, an attractive girl of eighteen, vanished from her master's house, returning four weeks later, starving and half clad, with a story of having been forcibly kept in a house on the Hertfordshire road where an old woman tried to make her lead an immoral life. She duly identified old Mary, who was tried at the Old Bailey and condemned to death. The Lord Mayor, however, was not satisfied with the evidence and had the case referred to the Law Officers of the Crown, who made a report which resulted in a free pardon. Meanwhile three witnesses from Aylesbury, named Gibbon, Greville and Clark, who had been called at the woman's trial to prove an alibi had been indicted for perjury, but at the September sessions at the Old Bailey they were discharged for want of prosecution. They had brought sixty witnesses to London, and on the 10th September, in default of appearing in court they were brought to the Mansion House and in the presence of the Lord Mayor, the deputies of several wards and many other gentlemen, were confronted with the gipsy, her son and daughter. They proved conclusively that they all knew her perfectly well, and that between the 1st and the 14th January she had been seen every day at several places between Aylesbury and Combe. In the following year Elizabeth Canning was convicted of perjury and sentenced to transportation.

11 September.—Arthur Bailey was a Bath post office sorter hanged at Ilchester on the 11th September, 1811, for stealing a letter containing a bill of exchange. "This unfortunate man, previous to his detection in the crime for which he suffered, lived in credit and bore an unblemished character, supporting an amiable wife and several children by his industry." There had been several other similar thefts, but in prison he steadily refused to tell whether he knew anything of them, saying: "I am about to suffer for what has been truly proved against me. All the rest must die with me." He showed great firmness at the gallows, joined fervently in the prayers and warned the spectators not to "covet money." He died without a struggle.

12 September.—Franz Stirn was a young German refugee who had fled to England from Hesse-Cassel, lately invaded by the French. He obtained employment in a school in Cross Street, Hatton Garden, and soon after Mr. Matthews, a surgeon in the neighbourhood, invited him to live in his house in return for music lessons for his wife and daughter and tuition in the Latin and Greek classics for himself. But Stirn, in spite of his talents, which ranged from a knowledge of Hebrew to skill in dancing, fencing and the polite accomplishments, had what the moderns would call "an inferiority complex." He was proud, jealous of indignity and "ingenious in discovering oblique reproach and insult in the behaviour of those about him." He quarrelled violently with his hosts over some crusts left about by a child, thinking they were meant as an affront to his poverty. The Matthews at last pacified him and, indeed, he expressed his gratitude at their kindness in passing over his fantastic behaviour, but the same sort of thing recurred, and one evening when Stirn sought Matthews out at "The Pewter Platter" in Cross Street with another quarrel, the outcome was that the German shot him dead and then tried to kill himself. Confined in Newgate, he first went on hunger strike, but was persuaded to give that up. He was tried, convicted of murder and condemned to death on the 12th September, 1760, but the same evening he found means to swallow poison and just before 11 o'clock he died.

13 September.—One night in August, 1707, Mr. James Barry, of Fulham, was awakened by a noise in his house. With his servant, Hatfield, he went downstairs, where they found two burglars. A scuffle ensued during which one of the intruders fatally stabbed Hatfield with a rapier, and escaped. A button torn off the coat of one of them, whose name was William Elby, afterwards identified him. At the Old Bailey he was convicted both of burglary and murder and hanged in chains at Fulham on the 13th September. He refused to reveal his accomplices or admit any other offences and threatened to knock down anyone who questioned him.

BABIES IN COURT.

In the Divorce Court recently counsel applied for a case to be heard out of its turn on the ground that one of his witnesses had a very small baby "and unless it is fed promptly at 12 o'clock, I am informed, there will be trouble." To this Henn Collins, J., replied: "So long as it doesn't occur in court I don't mind." The same point once arose in the Liverpool Police Court, when a baby in the arms of a woman in the dock cried ceaselessly for ten minutes. The case could not proceed because of the din, and after she had exchanged a few words with her solicitor he applied for a twenty minute adjournment while the infant was fed. Judge Crawford had no tenderness for crying children. Once at Edmonton County Court business was brought to a standstill by a baby yelling at the top of its voice in an adjoining room. After sending a bailiff to abate the nuisance, without result, he threw down his pencil and cried: "Cannot someone stop that child crying. Put it right into the street." "We cannot stop it sir," replied the bailiff. "The mother is in the witness-box." "Then take it back to its mother," said the judge, and calm was restored. On another occasion the same sound disturbed Brentford County Court, and Mr. Registrar Wright told the usher to "Go out and stop that baby from crooning." The usher tried, but only returned with the news: "It won't take any notice of me." "I can see you are not much use when mother is out," said the registrar, "Let it croon, then."

Reviews.

The New County Court Procedure. By G. M. BUTTS, Solicitor of the Supreme Court. Second Edition. 1942. Demy 8vo. pp. xi and (with Index) 179. London: The Solicitors' Law Stationery Society, Ltd. 15s. net.

The first edition of this book was written in order to ease the assimilation, by busy solicitors and their staffs, of many revolutionary ideas. Six years have since elapsed, and the outbreak of war introduced complications in the shape of emergency legislation. Successive developments in the latter have necessitated recurrent revisions of the text, but this is sufficiently up to date to include even the Liabilities (War-Time Adjustment) Rules, 1942, which are dealt with in an addendum. One chapter is devoted to an exposition of the principles underlying the emergency legislation and regulations. The remaining chapters follow the course of the various types of actions, through their successive stages down to execution by judgment summons and garnishee proceedings. Appeals and new trials are then dealt with, and costs have a chapter to themselves. Being the work of a practising solicitor, this volume may be relied upon as a safe guide in a branch of litigation which is steadily increasing in importance. The preface remarks that the preparation of the work was seriously hampered by enemy action, and the author pays a tribute to the enthusiastic stimulation and co-operation of the publishers in rendering publication possible.

An Outline of the Law of Landlord and Tenant. By A. M. WILSHERE, M.A., LL.B., of Gray's Inn and the Middle Temple, Barrister-at-Law. Second Edition, 1942. Demy 8vo. pp. x and (with Index) 118. London: Sweet & Maxwell, Ltd. 6s. 6d. net.

The relationship of landlord and tenant is now governed by a mass of complicated statutory provisions, and to the most important of these this book calls attention. Common law principles still affect the relationship, however, in numerous respects, and the learned author is not unmindful of these in his outline. In seven chapters he has contrived to deal with the salient features of a subject which has a long history, and still plays a vital part in the comfort and well-being of most of the population. The size of the book has been considerably increased in this edition, but this was inevitable in the present circumstances. There has been no loss in the lucidity which characterised the first edition, and readers will find this book a valuable adjunct to the larger volumes on the subject.

The Defence (Finance) Regulations. By F. C. HOWARD, M.A., Solicitor of the Supreme Court. 1942. Medium 8vo. pp. xiv and (with Index) 114. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

The interpretation of the Finance Regulations is a matter of difficulty, owing to their complexity. The literature on the subject has been issued to banks by the Foreign Exchange Control Department of the Bank of England, and is not generally available to the public. Explanatory pamphlets have been issued by some of the banks, but these only have a limited circulation. This book constitutes a successful endeavour to enlighten the advisers of those who, while doubtful of the legality of the Control's interpretation, are faced with a prosecution as the only means of obtaining an authoritative decision. This is an invidious position in which to be placed, but there is no alternative method of obtaining a ruling. Many prosecutions have taken place before magistrates, but the paucity of appeals to the Divisional Court has left the subject in a state of obscurity. This book should therefore receive a ready welcome from the legal and accountancy professions as a means of solving the many problems arising in an abstruse branch of the law.

Correspondence.

Judge against Jury.

Sir,—In "To-day and Yesterday," of your issue of the 29th August, under the above heading, you tell a good story of Judge Adams, of Limerick, but I think the best example of a rebuke to a jury from the bench is the story told, I believe, of Mr. Justice Morle. The judge had summed up strongly in favour of an acquittal, but to the astonishment of everybody, the jury brought in a verdict of guilty. The judge then addressed the prisoner as follows: "Prisoner at the Bar, your counsel thinks you innocent and so do I, but a jury of your fellow countrymen in the exercise of such intelligence as it possesses, which does not appear to be much, have found you guilty. It remains for me to pass sentence upon you. That sentence is that you be imprisoned for the space of one day and as that day was yesterday you may go."

St. Helens, Lancs. R. H. EGGAR.
1st September.

Legal Assistance to Soldiers.

Sir,—The proposal for legal advice by barristers and solicitors without expense to serving soldiers will be universally commended.

The suggestion, however, that soldiers' cases should be dealt with in the courts by practising lawyers under the Poor Persons procedure is not so practicable.

The solicitors' profession is hit adversely by the war; staffs are heavily reduced through war service, approximately one-third of the total number of solicitors are serving with the Forces; a great many more are temporarily with Government departments.

A solicitor's gross remuneration is fixed by that in force in 1881, and has only increased by a maximum of 33⅓ per cent. since then (and not at all since this war started), in spite of nearly every item of expenses and overhead charges having been trebled during the last sixty years, and a much reduced turnover since 1939.

To give effective service in any circumstances is a matter of difficulty; to do so under the Poor Persons procedure is almost a matter of impossibility, and, at any rate, one of gross unfairness.

It is a common fallacy that the State pays solicitors for providing this valuable and gratuitous service for poor persons; in fact, they are not even allowed a contribution from the State, or even from the parties, to their heavy office expenses.

By all means let the State give legal service to soldiers who cannot afford it, in the same way that they provide other necessaries; but where is the logic or fairness in asking a profession, badly hit already, to do so not merely for nothing but to contribute out of their pockets for the privilege?

Clerks' time, overhead expenses, and even a principal's time, all form part of the cost of production for a lawyer before a profit is arrived at, yet it is proposed to impose on the profession and expect them to bear these expenses themselves.

Rifles, food, clothes and other necessaries for soldiers are provided, and paid for by the taxpayer at large.

Manufacturers are not asked to provide these commodities out of charity, or even out of the excess profits, which they enjoy, but which the legal profession does not.

3rd September. SUBSCRIBER.

The "Thetis" Case.

Sir,—Your article in the issue of 15th August under the heading "Procedure in 1941" dealing with the Lord Chancellor's judgment in this case discusses interesting points that arose, but there are still some certain difficult questions on which doubts may still arise.

The principles laid down appear to cover State documents belonging to the Crown, and yet police reports are brought into that category.

The police are municipal servants (the Metropolitan police are on a slightly different footing), and the only connection with the Crown is the fact that the State make, I believe, a 50 per cent. efficiency grant.

If these principles, however, attach to police reports, do they not also apply to other municipal or public servants in which category the London Passenger Transport Board now comes?.

Logically, it would seem that the evidence of a 'bus conductor in an accident would be subject to the same ruling.

Another point of doubt which arises is that "the rules are limited to civil actions, and that the practice in criminal trials, where life or liberty is at stake, is not necessarily the same."

It is true that 18B applications are civil actions, but if the principle is that "this privilege should not be used in such a manner where a man's liberty is at stake in a criminal cause," one would imagine there was even a greater necessity in cases under 18B.

It is believed that in a decision by Avory, J., about fifteen years ago, he laid down that, when State privilege was claimed in a document, it was for the court to look at that document to see whether the privilege was properly claimed.

This, I think, would appeal to most lawyers as being a sound and logical principle, but unfortunately the House of Lords do not uphold that view.

The power is now put into the hands of a Minister or a permanent official to shut up any matter they do not want disclosed, and connotes the assumption that these people are actuated by the same principles of justice, even though they are personally concerned, as those which actuate the justiciary. The danger seems to be that the power of deciding what is possibly a legal point is put absolutely in the hands of the executive branch.

It does not want a great stretch of imagination to think that if the production is demanded of documents which criticise the department or members of it, a permanent official might misdirect himself in thinking that the public interest would be prejudiced by their production, and it would be an even greater temptation to withhold the document on the ground that "the practice of keeping a class of documents secret is necessary for the proper functioning of the public service."

Many will regret to see the decision, as this is a further extension of the growing practice of making our courts subservient to the bureaucracy.

A further article in your paper dwelling on what appear to be some of the inconsistencies in the judgment, and the results of that judgment, would, I think, prove of general interest to your readers.

Hendon, N.W.4. HAROLD BEVIR.
4th September.

[Our contributor hopes to deal at a later date with the points raised in the above letter.—ED., *Sol. J.*]

Obituary.

LIEUT.-COL. J. B. P. KARSLAKE.

Lieut.-Col. John Burgess Preston Karslake, T.D., D.L., late Berks Yeomanry, Barrister-at-law, died on Thursday, 3rd September, aged seventy-four. He was educated at Eton and Trinity College, Cambridge, and was called by the Middle Temple in 1890. He was a former Mayor of Paddington, and represented South Paddington on the London County Council from 1910 to 1931. In 1925 he became Vice-Chairman of the L.C.C. He had also been Chairman of the Metropolitan Water Board from 1920 to 1922, having been a member of the board from 1903.

MR. H. BACKHOUSE.

Mr. Henry Backhouse, solicitor, of Messrs. Henry Backhouse and Son, solicitors, of Victoria Street, Blackburn, died on Friday, 28th August, aged seventy. He was admitted in 1895.

MR. F. C. WHITE.

Mr. Frederic Charles White, solicitor, late of 1, Bedford Row, W.C.1, died on Friday, 4th September, aged eighty-four. He was admitted in 1881.

War Legislation.

STATUTORY RULES AND ORDERS, 1942.

E.P. 1730. **Food Control Committees** (Licensing of Establishments) Order, 1941. Amendment Order, August 28.

E.P. 1731. Food Control Committees (Local Distribution) Order, 1939. Amendment Order, August 28, granting a General Licence thereunder.

E.P. 1672. **Making of Civilian Clothing** (Restrictions) Orders (Amendment) Order, August 22.

E.P. 1725. **Petroleum** (No. 2) Order, August 21.

E.P. 1728. **Threshing of Grain** Order, August 27.

No. 1710. **War Damage** (Private Chattels Scheme) (No. 3) Order, August 25.

No. 1724. War Damage (Valuation of Articles as Materials) Regulations, August 27.

The Board of Trade announce that they have made regulations under the Prevention of Fraud (Investments) Act, 1939 (S.R. & O., 1942, No. 1762), further postponing the latest date for the lodgment of applications for licences under the Prevention of Fraud (Investments) Act, 1939, from 15th September, 1942, until 15th March, 1943. No applications for licences should be made until the Board of Trade announce that they are prepared to receive them.

Notes of Cases.

COURT OF APPEAL.

R. *v.* Minister of Health, *ex parte* Staffordshire Mental Hospitals Board.

Lord Clauson, Goddard and du Parcq, L.JJ. 27th March, 1942.

Superannuation—Asylum officer—Only established officer entitled to allowance—Minister of Health's jurisdiction in disputes relating to right to allowance—Jurisdiction extending to question whether officer an established officer—Asylum Officers' Superannuation Act, 1909 (9 *Edw.* 7, *c.* 48), *ss.* 1, 15, 17.

Appeal from a decision of a Divisional Court, 86 SOL. J. 84.

The claimant was employed by the applicant board at one of their mental hospitals for thirty-eight years as a permanent plumber until 1934, when he resigned. In 1939 and 1940 he was employed as a temporary plumber for various periods. While he was working at the hospital he often had with him an inmate or inmates suitable to assist him. The claimant having applied successfully to the Minister of Health under the Asylum Officers' Superannuation Act, 1909, for an order declaring him entitled to a superannuation allowance, the board made this application, contending that the claimant was not an "established officer or servant" within the Act, and therefore not entitled to the allowance claimed. By s. 1 (1) of the Act ". . . the established officers or servants in asylums shall be divided into two classes. The first class shall consist of all those established officers and servants who have the care or charge of the patients in the usual course of their employment. The second class shall include all other established officers and servants." By s. 15, ". . . any dispute as to the right to superannuation allowance of any officer . . . shall be determined by" (now) the Minister of Health. By s. 17 (1) ". . . established officer or servant means such officer or servant employed in a permanent capacity as has the care or charge of the patients or whom the visiting committee . . . shall . . . determine to be an established officer or servant." The Divisional Court held that the Minister had jurisdiction to determine the dispute, and the board appealed.

LORD CLAUSON said that it was argued for the board that no sense could be made of the Act of 1909 unless "any officer" in s. 15 were read as meaning "any established officer," and that, therefore, whether a man was an established officer must be ascertained as a preliminary to the existence of the Minister's jurisdiction. He did not feel called on to express any opinion on that point, which had been discussed below, because the Act appeared to state plainly that the Minister had jurisdiction whenever there was a dispute between the board and any officer about superannuation allowance. It only had to be established that the man was an officer. There was no doubt about that here. Once there was an officer claiming a superannuation allowance, there could be no limit to the jurisdiction of the Minister to deal with the dispute as it stood. It was suggested that the Legislature, though intending s. 15 to be restricted to established servants, thought it unnecessary or inconvenient to introduce the word "established." The court had nothing to do with those matters. The section had deliberately been made plain so that all questions of this kind between any servant and the authority should clearly be covered by the Minister's jurisdiction. There were a number of provisions in the Act which might well give rise to questions of difficulty in ascertaining whether an officer was an established officer. It was to prevent such points from being raised, in particular, for example, the question whether a man lost his right to be classified as an established servant because his name was not on a certain list, that s. 15 had been drafted in very general terms. The appeal must be dismissed.

GODDARD and DU PARCQ, L.JJ., agreed.

COUNSEL: *Thorpe*, K.C., and *Done*; *The Solicitor-General* (Sir David Maxwell Fyfe, K.C.), and *Valentine Holmes*; *Erskine Simes* (for the employee).

SOLICITORS: *Sharpe, Pritchard & Co.*, for *T. H. Evans*, Stafford; *Solicitor to the Minister of Health*; *W. H. Thompson.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Zürich General Accident & Liability Insurance Co., Ltd. *v.* Morrison.

Lord Greene, M.R., MacKinnon and Goddard, L.JJ. 30th March, 1942.

Insurance (motor car)—Insurer's action to avoid policy—Notice to third party stating grounds of claim—Amendment of statement of claim—New matters not in notice—No right to rely on as against third party—Road Traffic Act, 1934 (24 & 35 *Geo.* 5, *c.* 50), *s.* 10 (3).

Appeal from a decision of Atkinson, J.

The defendant took out with the plaintiff company an insurance policy in respect of his motor car. While the car was being driven with his consent an accident occurred which resulted in the death of one, Rackley. Mrs. Rackley recovered damages in an action against the driver. He being a person of no substance, she had a claim against the company under the Road Traffic Act, 1934. The company, before issuing on the 1st March, 1940, a writ in the action against the insured, in which they claimed to avoid the policy in pursuance of s. 10 (3) of the Act, notified the third party (Mrs. Rackley) of the matters of misrepresentation and concealment on which they relied. The third party was added as a defendant. Those matters appeared also in their statement of claim filed in February, 1941. In October they were allowed to amend the statement of claim by adding further allegations of misrepresentation and concealment. In her amended defence the third party pleaded that those further matters were not included in the notice to her under s. 10 (3), and that they could not, therefore, now be relied on as against her. Atkinson, J., upheld that contention. The company now appealed. By s. 10 (1) third parties are entitled to recover from insurers the amount of a judgment obtained in respect of a liability

covered by a policy under s. 36 of the Road Traffic Act, 1930, and they are so entitled notwithstanding the insurer's right to avoid or cancel the policy. By s. 10 (3) the insurer's right to avoid the policy is preserved if, in an action brought within a specified time, he obtains a declaration that the policy was obtained by non-disclosure or misrepresentation, provided that the benefit of the declaration shall not avail the insurer against a third party who has recovered judgment in an action begun before that of the insurer, unless the insurer before or within seven days after bringing his action has notified the third party of the non-disclosure or misrepresentation which he alleges.

LORD GREENE, M.R., said that the company were undoubtedly entitled to rely on the additional disclosure against the assured and the driver, and it entitled them to avoid the policy. The contention that they were entitled to rely on it against the third party although it had not appeared in the notice served on her in February, 1940, was hopeless. The proviso to s. 10 (3) did not, it was true, expressly say that, as against third parties, the insurer was to be confined to the particulars in his notice. If, however, the insurer could bring forward matters not specified in the notice the protection given by the proviso would be nugatory. With regard to the question in the proposal form " State whether you have driven motor cars regularly and continuously in the United Kingdom during the past twelve months," Atkinson, J., had held it not established that the assured's answer " Yes " was false. The question was hopelessly vague. Questions framed in such a slovenly way should not be put to a person making a proposal for an insurance. He might afterwards find himself accused of giving a false answer according to the construction which the insurer chose to place on the question. Such questions were, although not designedly so, mere traps, and insurance companies must expect to have them construed strictly against them. In deciding whether the non-disclosure of the fact that the assured held only a provisional driving licence and had failed to pass a driving test was vital, Atkinson, J., had rightly adopted the test laid down in *Mutual, etc., Co.* v. *Ontario, etc., Ltd.* [1925] A.C. 344, at p. 351, and had rightly held that the insurers had failed to prove that had they known of the failure to pass the test they would not have issued a policy on precisely similar terms. The appeal must be dismissed.

MACKINNON and GODDARD, L.JJ., agreed.

COUNSEL: *Beyfus*, K.C., and *Fox-Andrews*; *Denning*, K.C., and *Hauser*.

SOLICITORS: *A. E. Wyeth & Co.*; *E. & J. Mote*, for *Carter & Fisher*, Torquay.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re Joel; Rogerson *v.* Joel.

Farwell, J. 25th June, 1942.

Revenue—Estate duty—Testator killed on active service—Duty remitted—Apportionment of sum remitted—Finance Act, 1924 (14 & 15 *Geo.* 5, *c.* 21), *s.* 38.

Adjourned summons.

The testator, by his will dated the 1st October, 1939, after making specific and pecuniary bequests to a sister and two nieces and to other remoter relatives, gave his residuary estate as to two-fifths thereof to his brother J, as to two-fifths to a second sister R, and as to the remaining one-fifth to O, a nephew of his late wife. The testator was killed on war service in May, 1941. Accordingly, under the Finance Act, 1900, s. 14 (1), and the Death Duties (Killed in War) Act, 1914, s. 1, as amended and extended by the Finance Act, 1918, s. 44, and the Finance Act, 1924, s. 38, the estate became entitled to a remission of duty in respect of the estate passing to the brothers and sisters and their descendants. Accordingly, the revenue authorities had remitted duty amounting to approximately £250,000. This summons was taken out by the executors of the testator asking how the benefit of this sum should be apportioned between the persons entitled to the residuary estate. The three residuary legatees were defendants.

FARWELL, J., said that the intention of the Legislature in providing for the remission of estate duty in cases of death on war service was that the benefit of the remission should go to the persons specified in the Acts. Accordingly he would declare that the testator's brother J and his sister R should be credited in equal shares with the benefit of the remission of duty. This declaration was without prejudice to any question as to the estate duty which would ordinarily be payable in respect of any specific or pecuniary gift under the will, other than the residuary gifts.

COUNSEL: *A. H. Droop*; *Sir Herbert Cunliffe*, K.C., and *Leonard Stone*; *Romer*, K.C., and *Hillaby*; *Geoffrey Cross*.

SOLICITORS: *Allen & Overy*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Butler's Settlement Trusts; Lloyds Bank *v.* Ford.

Bennett, J. 25th June, 1942.

Power of appointment—Exercise of special power by Will—Subsequent exercise of power by deed—Death of appointor—Whether provisions of will revoke deed.

Adjourned summons.

By a settlement dated the 20th November, 1925, B settled certain shares upon trust for her children and remoter issue and their respective husbands and wives as she should from time to time by deed or deeds, revocable or irrevocable, or by will or codicil appoint. The settlor by her will dated the 26th July, 1926, purported to exercise this power. Subsequently, she exercised the power by a deed dated the 26th September, 1928, in a manner different to that in which she had exercised it by her will. This deed reserved power to revoke the appointment therein contained. The testatrix died on the 15th October, 1930. F, one of the appointees under the deed of 1928, was an officer in the R.A.F. who had been reported missing in June, 1940. On the 12th March, 1941, the Air Ministry issued a certificate stating that F for official purposes must be presumed to have died on or about the 19th June, 1940. This summons was taken out by the trustees of the settlement of 1925 asking, first, whether they were at liberty to deal with the income of F's share of the trust funds on the footing that he died on or about the 19th June, 1940, and secondly, whether the trust funds were now held subject to the appointment contained in the will of the settlor or that contained in the deed of 1928.

BENNETT, J., said that he could not deal with the first question on the information then before him. It must stand over for further information to be supplied by the Air Ministry. As to the second question, the will was ambulatory until the death of the settlor (*In re Moses* [1902] 1 Ch. 100). The appointment of 1928 must operate according to its terms until it had been revoked by some instrument executed in exercise of the power of revocation therein contained. A power of revocation was not a power of appointment, but was a power the exercise of which was a condition precedent to the exercise of the power of appointment. An appointment in exercise of a power did not *prima facie* refer to powers of revocation but to powers of appointment (*In re Thursby's Settlement* [1910] 2 Ch. 181). As the will was executed before the deed of 1928 it could not revoke that deed.

COUNSEL: *Humphrey King*; *C. E. Shebbeare*; *H. A. Rose*.

SOLICITORS: *R. C. Bartlett & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Beaumont *v.* Wilson.

Viscount Caldecote, C.J., Humphreys and Cassels, JJ. 17th April, 1942.

Highways—Injury to surface by occupier of premises—Sprinkler arrangement fitted—No notice to highway authority—Whether offence against Highway Act—Highway Act, 1835 (5 & 6 *Will.* 4, *c.* 50), *s.* 30—*Waterworks Clauses Act*, 1847 (10 & 11 *Vict. c.* 17), *s.* 30—*Public Health Act*, 1936 (26 *Geo.* 5 *and* 1 *Edw.* 8, *c.* 49), *ss.* 121 (1), 279 (1), (2).

Appeal by case stated from a decision of East Riding of Yorkshire justices.

An information was preferred by the appellant, Beaumont, the clerk to the East Riding County Council, charging the respondent with having contravened s. 72 of the Highway Act, 1835, by wilfully injuring the surface of a street. At the hearing of the information the following facts were established: On the 17th April, 1941, a foreman of the county council saw the respondent standing by superintending one of his (the respondent's) employees who was making a trench in the footpath of a street near the respondent's premises. The work was being done for the purpose of fixing a sprinkler arrangement for the premises. No notice of his intention to open the road was given to the county council by the respondent. It was contended for the appellant that the work being done was not authorised by s. 121 of the Public Health Act, 1936; and that the Act of 1835 had not been impliedly repealed by the Act of 1936. The justices held that the purpose for which the road was opened fell within s. 121 of the Act of 1936, and that the failure to give notice did not constitute an offence against s. 72 of the Act of 1835. The clerk to the county council appealed. Section 121 (1) of the Act of 1936 permits, subject to Pt. XII of the Act, any occupier of premises entitled to take a supply of water from the mains of the local authority to " break open any street for the purpose of laying any necessary communication pipe." Part XII includes s. 279, which regulates the " breaking open of streets." Section 279 (1) incorporates with the Act of 1936, *inter alia*, s. 30 of the Waterworks Clauses Act, 1847. That section requires notice of an intention to open up a street to be given by water undertakers (which expression, by s. 279 (2) of the Act of 1936, includes anyone like the respondent, who, not being a local authority, is empowered by the Act of 1936 to " lay a pipe ") to the persons under whose control or management a street is, which persons, by s. 279 (1) (*a*) of the Act of 1936, are to be taken, where a street is repairable by the inhabitants at large, to refer to the highway authority (i.e., here, the county council).

VISCOUNT CALDECOTE, C.J., said that the effect of the material statutory provisions was that the county council should have been served with a notice by the respondent of his intention to break open the highway. That he had not served that notice was sufficient to constitute the offence of injuring the surface of the highway under s. 72 of the Act of 1835. There were other defects in the procedure which the respondent had chosen to adopt. The Act of 1847 required streets to be opened up by a person in the position of the respondent under the superintendence of the highway authority. It was, however, sufficient to say that the appeal must be allowed because he had no right to open the highway as he had done without having complied with the conditions under which alone he had any such right.

HUMPHREYS and CASSELS, JJ., agreed.

COUNSEL: *Erskine Simes*. There was no appearance by or for the respondent.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *R. M. Beaumont*, Beverley.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Honours and Appointments.

The Archbishop of Canterbury has appointed Mr. HARRY BEVIR VAISEY, K.C., D.C.L., to be Commissary General of the Diocese of Canterbury in the place of the late Commissary F. H. L. Errington, C.B., D.C.L. Mr. Vaisey was called by Lincoln's Inn in 1901, and took silk in 1925.

Acting-Lieutenant TIMOTHY B. D. KENDALL, R.N.V.R., has been awarded the D.S.C. for skill and coolness in successful action against enemy submarines. He was admitted in 1939, and is associated with Messrs. Banks, Kendall, Taylor & Gorst, solicitors, of Liverpool.